

PROVIDENT NATIONAL BANK

BROAD AND CHESTNUT STREETS, PHILADELPHIA, PA/REPLY TO: P.O. BOX 7648, PHILADELPHIA, PA 19101

November 28, 1979

11239

RECORDATION NO. Filed 1425

DEC 26 1979 - 1 50 PM

INTERSTATE COMMERCE COMMISSION

RE: Avec Equipment Corporation

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

No. 360A091

Date DEC 26 1979

Fee \$ 60.00/10

ICC Washington, D. C.

Gentlemen:

We enclose herewith for recording pursuant to Section 20(c) of the Interstate Commerce Act the original and two counterparts of a Mortgage, Assignment and Security Agreement, dated November 28, 1979 which grants a mortgage upon and security interest in 50 railroad boxcars, and constitutes an assignment of income derived from such boxcars. This document assigns, among other things, rights of Avec Equipment Corporation under an Operating and Use Agreement with Youngstown & Southern Railway Company which has been previously recorded with the Commission under recordation No. 10962 on October 30, 1979 at 11:30 a.m.

The parties to the transaction are as follows:

Mortgagor-Assignor: Avec Equipment Corporation
P.O. Box 706
Galion, Ohio 44833

Mortgagee-Assignee: Provident National Bank
Broad and Chestnut Streets
Philadelphia, PA 19101

The following is a general description of the railroad equipment covered by the document:

No. of Units	Description	A.A.R. Mechanical Designation	Identifying Road Nos.
50	50' - 55 ton rebuilt boxcars with 10' doors	XP	See Exhibit A to Mortgage, Assignment and Security Agreement

Also enclosed is a check in the amount of \$60.00 payable to the Treasurer of the United States to cover recording of the mortgage and assignment. Would you please acknowledge receipt of the enclosure on the enclosed copy of this letter and stamp and return to our representative the original of the document.

Very truly yours,

Barbara J.S. Bear

Barbara J.S. Bear
Banking Officer

*Enclosed requires
under 10962*

County of PA

Interstate Commerce Commission

Washington, D.C. 20423

12/26/79

OFFICE OF THE SECRETARY

Barbara J.S. Bear
Provident Natl. Bank
Broad & Chestnut Streets
Phila. PA 19101

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/26/79 at 1:50pm, and assigned re-recording number(s) 11239.

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

11239
RECORDATION NO. Filed 1425DEC 26 1979 - 1 50 PM
INTERSTATE COMMERCE COMMISSION

MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

Mortgage, Assignment and Security Agreement dated November 28 , 1979 by and between AVEC EQUIPMENT CORPORATION, an Ohio corporation (the "Debtor") and PROVIDENT NATIONAL BANK, a national banking association (the "Secured Party").

Recitals

WHEREAS, Debtor is the owner of 50 railroad boxcars identified in Exhibit A hereto (such boxcars together with any replacements therefor and all parts, modifications and accessions thereto being the "Equipment"); and

WHEREAS, Secured Party has or will make certain loans to Debtor to finance the rehabilitation of the Equipment, and Debtor has issued its promissory note of even date herewith (the "Note") evidencing such loans; and

WHEREAS, Debtor has entered into an agreement dated June 28, 1979 with Scott Paper Company ("Scott"), a copy of which is attached hereto as Exhibit B, under which Scott is entitled to the exclusive use of the Equipment and guarantees minimum revenues to be derived from the Equipment as set forth therein (the "Scott Agreement"); and

WHEREAS, Debtor is a party by assignment to an agreement dated November 28, 1978 with Youngstown & Southern Railway Company ("Railroad"), a copy of which is attached hereto as Exhibit C,

providing that the Equipment will carry the Railroad's reporting marks and numbers and providing for the rental to be paid by Railroad and other users for use of the Equipment (the "Railroad Agreement"); and

WHEREAS, to secure payment of Debtor's Obligations, as hereafter defined, Debtor has agreed to grant to Secured Party a mortgage upon and a security interest in the Equipment and to assign to Secured Party and grant a security interest in the Scott Agreement and the Railroad Agreement, all insurance on the Equipment and the proceeds of that insurance, and all cash and non-cash proceeds of any of the foregoing (collectively the "Collateral").

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Mortgage of, Assignment of, and
Security Interest in Collateral

1.1 Debtor hereby mortgages, grants a lien upon and a security interest in the Equipment as security for the payment and performance of Debtor's Obligations. As used herein, the term "Obligations" means the Note and all obligations, representations, and warranties of Debtor to Secured Party provided for or referred to herein.

1.2 Debtor hereby assigns to Secured Party all of its right, title and interest, and grants a security interest in the

Scott Agreement and the Railroad Agreement and any modifications or amendments thereto to the extent that such agreements relate to the Equipment. This assignment includes without limitation the absolute and unconditional right to receive all amounts payable under the Scott Agreement and the Railroad Agreement for the Equipment and the benefit of all performance under the Scott Agreement and the Railroad Agreement, and such assignment shall be valid and binding upon Debtor regardless of any invalidity, defect in, or unenforceability of the Note or any other provision hereof. Upon payment in full of all amounts secured hereby, this assignment shall terminate and be of no further force or effect.

Section 2. Representations and Warranties of Debtor

Debtor represents and warrants that:

2.1 Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has full power and authority to make and perform this Agreement, the Note and all other documents delivered in connection herewith.

2.2 The execution, delivery, and performance of this Agreement and of the Note and all documents in connection herewith have been duly authorized by all requisite corporate action and will not violate any provision of law or regulation, or of the charter or bylaws of Debtor, or of any agreement or other instrument by which Debtor is bound.

2.3 This Agreement and the Note and all other documents delivered in connection herewith are valid and binding obligations of Debtor enforceable in accordance with their respective terms.

2.4 Debtor has good title to the Collateral free and clear of any liens and encumbrances other than as referred to herein. Debtor's principal place of business and the address at which its records with respect to the Collateral are kept is 342 Harding Way West, P. O. Box 706, Galion, Crawford County, Ohio 44833.

Section 3. Agreements of Debtor

3.1 As to the Scott Agreement and the Railroad Agreement, Debtor will:

(a) Fulfill or perform every provision thereof to be fulfilled or performed by it;

(b) Give to Secured Party prompt notice (i) of the receipt of any notice received by Debtor of a default by Debtor thereunder, together with a copy of such notice, and (ii) of the default by any other party thereunder;

(c) Enforce, short of termination, the performance or observance of every provision to be performed or observed by any other party thereto;

(d) Not modify or amend the terms of such agreements as to the Equipment without the written consent of Secured Party;

(e) Neither waive nor release the other parties to such agreements from any obligations or conditions thereof.

3.2 Debtor will preserve the Collateral free and clear of any liens or encumbrances other than as referred to herein and will cause the Collateral to be insured by insurers satisfactory to Secured Party and in form and amount satisfactory to Secured Party, against fire and other casualty loss, with extended coverage in the broadest form, liability and such other hazards as are customary with such Collateral, and will cause Secured Party's interest to be endorsed on all such policies of insurance in such manner that all payments for losses will be paid to Secured Party, and will furnish Secured Party with evidence of such insurance. Debtor will pay all premiums on any insurance referred to herein as and when they become due, do all things necessary to maintain the insurance in effect, and require that all policies of such insurance require the insurer to give 30 days' written notice to Secured Party prior to any modification or termination thereof.

3.3 Debtor will not (a) permit any of the Collateral to be levied upon under legal process, (b) permit the Collateral to become subject to any lease or rental agreement that has not been assigned to Secured Party pursuant to the provisions hereof, or (c) sell, exchange, or otherwise dispose of any of the Collateral or any of Debtor's rights therein.

3.4 Debtor shall pay promptly when due all license fees, assessments, sales, use, property or other taxes imposed upon the Equipment or upon the use thereof.

3.5 Debtor will keep complete and accurate books and records and make all necessary entries therein to reflect the transactions and acts giving rise to the Collateral and all payments, credits and adjustments applicable thereto. The Debtor will keep the Secured Party fully informed as to the location of all such books and records and shall permit the Secured Party or its agents to have access to such books and records and, if deemed necessary by the Secured Party, to remove them from the Debtor's place of business or any other place where they may be found for the purposes of examining, auditing, and copying the same. Any of the Debtor's books and records so removed shall be returned as soon as such inspection, audit, or copying is completed.

3.6 Debtor will furnish to Secured Party such financial or other information concerning its affairs and the Collateral as Secured Party may reasonably request.

3.7 Debtor will execute from time to time upon request of Secured Party such financing statements, continuation statements, assignments, notifications and other documents as are necessary or desirable at Secured Party's sole discretion to perfect and continue the liens and security interests granted herein. Debtor hereby appoints Secured Party as its attorney-in-fact to do at Secured Party's option and at Debtor's expense, all acts and things which Secured Party may deem necessary or desirable to perfect and continue the liens and security interests created herein and to protect the Collateral.

3.8 Debtor hereby appoints Secured Party its attorney-in-fact in the name of Debtor or otherwise to ask, demand, receive and give acquittance for any and all money and claims for money due and to become due under or arising out of the Scott Agreement and Railroad Agreement, to endorse any checks or other instruments in connection therewith, to give all or any notices, consents, instructions or other communications reserved to Debtor therein, and to file any claims or take any action or institute any proceedings, granting unto said attorney full power to do any and all things necessary to be done with respect to the Scott Agreement and the Railroad Agreement as fully and effectively as Debtor might or could do, and Debtor hereby ratifies all said attorney shall lawfully do or cause to be done hereunder. This power of attorney shall be irrevocable for the term of this agreement. Nothing herein shall obligate Secured Party to perform or discharge any obligation of Debtor under the Scott Agreement or the Railroad Agreement.

3.9 Debtor will pay all of Secured Party's expenses, including fees and disbursements of its counsel, in connection with the transactions contemplated hereby, the enforcement hereof and of the Note and the exercise by Secured Party of its rights hereunder or under the Note. Debtor agrees that Secured Party may, at its sole discretion and without notice to Debtor, obtain insurance covering any of the Collateral if Debtor fails to do so, discharge taxes or liens or encumbrances levied or placed upon and of the Collateral, and pay for maintenance and preservation of the

Collateral. Debtor agrees to reimburse Secured Party, on demand, with interest at the rate provided for in the Note, for any such payment made or expense incurred and agrees that the Collateral shall secure reimbursement of such payments and expenses.

Section 4. Events of Default

The following shall constitute Events of Default hereunder and under the Note:

4.1 If there shall be a default in the payment of principal or interest on the Note when and as the same shall become due and payable.

4.2 If Debtor or Scott or the Railroad becomes insolvent or makes an assignment for the benefit of creditors, or if any petition is filed by or against Debtor, Scott or Railroad under any provision of any state or federal law alleging that Debtor, Scott or Railroad is insolvent or unable to pay debts as they mature.

4.3 If the Scott Agreement is terminated; or if there is any breach of the Scott Agreement by either of the parties thereto; or if there is any amendment or modification of the Scott Agreement without the written consent of Secured Party.

4.4 If the Railroad Agreement terminates, whether or not pursuant to its terms, unless prior to such termination, a substitute agreement has been approved by Secured Party; or if there is any breach of the Railroad Agreement by either of the

parties thereto; or if there is any amendment or modification of the Railroad Agreement without the written consent of Secured Party.

4.5 If any attachment, levy or garnishment issues against any of the Collateral.

4.6 If any of the representations and warranties of Debtor set forth in Section 2 hereof shall prove to have been materially false or incorrect.

4.7 If Debtor shall fail to perform any of its agreements set forth in Section 3 hereof.

Section 5. Remedies

Upon the occurrence of an Event of Default, Secured Party may, in its sole discretion take any action stated herein as well as any other action allowed by law, and may exercise all remedies from time to time and as often as Secured Party, in its judgment, may deem desirable:

5.1 Declare the Note to be due and payable and the Note shall thereupon become due and payable, without presentation, demand, or further action of any kind.

5.2 Exercise all rights of a Secured Party under any applicable law, including the Uniform Commercial Code, including the right to collect, receipt for, settle, compromise, adjust, sue for, foreclose or otherwise realize upon any of the Collateral, and to dispose of any of the Collateral at public or private sale

or other proceeding. Debtor agrees that 10 days' prior written notice of such sale or disposition shall constitute reasonable notice under the Uniform Commercial Code, and further agrees that Secured Party or its nominee may become the purchaser at any such sale.

Section 6. Limitation of Liability

Notwithstanding any provision herein or in the Note, the liability of Debtor hereunder and under the Note shall be enforceable only out of the Collateral and the proceeds therefrom, except in the case of an Event of Default arising under Subsection 4.6 of Section 4 hereof.

Section 7. Successors and Assigns

All provisions herein shall inure to and become binding upon the successors, representatives, receivers, trustees and assigns of the parties.

Section 8. Miscellaneous

8.1 The Debtor's address for the delivery of notices, requests, demands and other communications hereunder is as set forth below, until changed by written notice to the Secured Party:

Avec Equipment Corporation
P. O. Box 706
Galion, Ohio 44833

8.2 The Secured Party's address for the delivery of communications hereunder is as set forth below until changed by notice to Debtor:

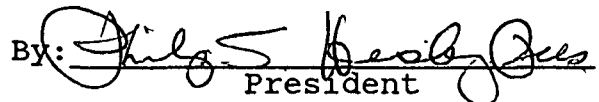
Provident National Bank
P.O. Box 7648
Philadelphia, Pa. 19101

Attention: Mr. R. C. Rhoades

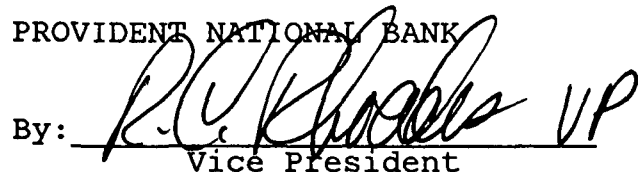
8.3 This Agreement has been executed pursuant to and shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, this Agreement has been duly executed on the day and year first above written.

AVEC EQUIPMENT CORPORATION

By: 
President

PROVIDENT NATIONAL BANK

By:  VP
Vice President

STATE OF PENNSYLVANIA :
 : SS
COUNTY OF PHILADELPHIA :

On this the 17th day of December , 1979, before me, a Notary Public for the Comm. of Penna. , the undersigned officer, personally appeared Philip S. Hesby who acknowledged himself to be the President of AVEC EQUIPMENT CORPORATION, an Ohio corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public

My Commission Expires:

WILLIAM O. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

STATE OF PENNSYLVANIA :
 : SS
COUNTY OF PHILADELPHIA :

On this the 17th day of December , 1979, before me, a Notary Public for the Comm. of Penna. , the undersigned officer, personally appeared R. C. Rhoades who acknowledged himself to be a Vice President of PROVIDENT NATIONAL BANK, a national banking association, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public

My Commission Expires:

WILLIAM O. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

EXHIBIT A

This Exhibit A is made part of the Mortgage, Assignment and Security Agreement number 046 dated November 28, 1979 between AVEC EQUIPMENT CORPORATION (Debtor) and PROVIDENT NATIONAL BANK (Secured Party). The following group of 50 boxcars are identified by and bear the reporting marks of the Youngstown & Southern Railway Company:

YS23103	YS24216	YS24894
YS23172	YS24329	YS26024
YS23211	YS24350	YS25512
YS23224	YS24442	YS25815
YS23266	YS24545	YS25800
YS26084	YS24639	YS25903
YS23413	YS25005	YS25947
YS23517	YS25116	YS25951
YS23751	YS25133	YS26010
YS23759	YS25422	YS26016
YS23919	YS25497	YS26019
YS23997	YS25522	YS26022
YS24029	YS25551	YS26026
YS24033	YS25566	YS26088
YS24051	YS25145	YS26124
YS24080	YS25337	YS26147
YS24158	YS25980	

AVEC EQUIPMENT CORPORATION

Date: November 28, 1979By: Philip S. Healy, Pres.

President

ASSIGNMENT CAR AGREEMENT

This Agreement is made and entered into this 28th day of June, 1979 by and between AVEC EQUIPMENT CORPORATION, an Ohio corporation (hereinafter referred to as "Avec") having a mailing address at P. O. Box 706, Galion, Ohio 44833, and SCOTT PAPER COMPANY, a Pennsylvania corporation (hereinafter referred to as "Scott"), having a mailing address at Scott Plaza, Philadelphia, Pennsylvania 19113. In consideration of the mutual covenants contained herein the parties agree as follows:

1. Avec warrants and represents that it has free and clear title to four hundred (400) railroad boxcars ("Boxcars") similar to Y&S 23968 and further described in Exhibit A attached to this Agreement and made a part hereof.

2. Avec agrees to deliver not less than 200 of the Boxcars to railroad sidings at Scott facilities on or before December 31, 1979 and to deliver not less than 200 Boxcars on or before December 31, 1980. Avec warrants that upon delivery the Boxcars will (1) bear the reporting marks of a railroad as that term is used in the Interstate Commerce Act; (2) be suitable for use in the shipment of sanitary paper products; and (3) be assigned to Scott as controllable "XP" boxcars; and (4) be delivered in groups of 50 boxcars each as specified in numbered schedules now or subsequently attached hereto and made a part hereof.

3. Scott guarantees that Avec shall accrue an average of at least Two Hundred Dollars (\$200.00) in per diem and mileage payments for each month for each Boxcar for a period of sixty (60) months from the date such Boxcar is received and accepted for use by Scott, PROVIDED:

(a) in determining whether the minimum Two Hundred Dollars (\$200.00) per month per Boxcar per diem and mileage has accrued in a given month, the Boxcars shall be assigned to groups of no more than fifty (50) cars as they are delivered, and the average per diem and mileage for all the Boxcars in service for that month in any such group shall be used as the per diem and mileage for each Boxcar in that group.

(b) with respect to any month in which a Boxcar is out of service for repairs or due to delivery part way through the month, the amount guaranteed by Scott for such month for such Boxcar shall be reduced by a sum equal to the number of days such Boxcar is out of service times Two Hundred Dollars (\$200.00) divided by the number of days in such month;

(c) if any Boxcar is destroyed or out of service for longer than forty-five (45) days for repairs, this guarantee shall immediately terminate with respect to such Boxcar, and Scott shall not guarantee any further per diem or mileage payments for such Boxcar; provided that Scott may re-accept such Boxcar for service and renew this Agreement with respect to such Boxcar if Avec subsequently returns the Boxcar to service.

(d) by this guarantee Scott only guarantees that Two Hundred Dollars (\$200.00) per month of per diem and mileage will be accrued; Scott does not guarantee that the railroads or any other third parties obligated to pay such per diem and mileage with respect to any Boxcar will make any payments to Avec, and Scott shall not be liable for the failure of any such railroads or other third parties to make such payments.

Subject to the above-conditions, Scott shall perform this guarantee by paying to Avec the difference between Two Hundred Dollars (\$200.00) and the average per diem and mileage properly accrued for any month for each Boxcar within thirty (30) days after receipt of written notice and appropriate supporting documentation showing that average per diem and mileage for the Boxcars was less than Two Hundred Dollars (\$200.00) per Boxcar for such month.

4. The initial term of this Agreement with respect to each Boxcar shall be six (6) years, commencing on the date of delivery of such Boxcar. Provided that this Agreement has not been earlier terminated and that no event of default has occurred and is continuing hereunder, Avec agrees that it shall not enter into any agreement for the assignment or use of the Boxcars with any other party upon expiration of this Agreement without first offering to enter into a new agreement with Scott for the assignment or use of the Boxcars upon terms equal to or better than those offered to any other party. Avec shall make such offer to Scott in writing, and Scott shall have the right to accept such offer by sending written notice of its acceptance to Avec at any time within thirty (30) days after Scott's receipt of the written offer from Avec.

5. Avec shall be entitled to all revenues from the Boxcars. Avec is responsible for maintaining and repairing the boxcars, or causing the boxcars to be maintained and repaired, in accordance with the Code of Rules of the Association of American Railroads, the regulations of the Interstate Commerce Commission and the rules and regulations of other federal and state authorities having jurisdiction. Scott shall have the

right to require that any car which requires repair (as opposed to running maintenance) or which becomes unfit for transportation of sanitary paper products be withdrawn from service immediately until such condition is corrected, provided that Avec shall have right to retire any Boxcar if it determines that the cost of repair is unreasonable. Avec will give Scott prompt written notice of any determination to withdraw a Boxcar from service. Avec shall be responsible for payment of all property taxes levied upon the Boxcars and for filing all necessary returns and reports for such taxes.

6. Scott agrees to make its best effort to assure 100% utilization of the Boxcars for the shipment of its sanitary paper products and, consistent with sound business judgment and good transportation practices, to utilize the Boxcars in a way that will generate maximum mileage payments.

7. From time to time, the parties may amend this Agreement to cover up to 200 additional Boxcars by amending Exhibit A or attaching new exhibits, signed by both parties, hereto.

8. Avec shall have the right to assign this Agreement to any other party or parties, in whole or in part, provided that any such assignment shall not extinguish or diminish the duties and obligations of Avec or the rights of Scott hereunder.

9. Arrangement of financing suitable to Avec is a condition precedent to all of Avec's obligations under this Agreement.

10. Scott shall have the right to immediately terminate this Agreement, without further obligation by either party, as to: (a) all or any of the first 200 Boxcars if Avec fails to obtain financing for the first 200

Boxcars by September 1, 1979, (b) as to all or any of the second 200 Boxcars if Avec fails to obtain financing for the second 200 Boxcars by January 1, 1980; and (c) as to all or any of the Boxcars delivered under this Agreement if Avec materially breaches any other term or condition of this Agreement.

11. This Agreement and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

12. All notices provided for herein shall be considered properly given if in writing and (a) sent by telex and confirmed by first class mail, postage pre-paid or (b) given by certified or registered mail, postage pre-paid. The respective addresses for notices shall be the addresses of the parties of the outset hereof. Such addresses may be changed by either party giving written notice thereof to the other. Any notice given pursuant to the foregoing provisions shall be deemed given when actually received.

13. This Agreement, including all Exhibits hereto, constitutes the entire agreement of the parties and may not be modified except by written agreement signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

AVEC EQUIPMENT CORPORATION

SCOTT PAPER COMPANY

By: Philip S. Hes By
Title: President

By: D. C. Frisch JBB
Title: Vice President

EXHIBIT A

The four hundred (400) Boxcars referred to in Paragraph 1 of the attached Agreement shall meet the following specifications:

1. All Boxcars shall substantially conform to the quality and specifications of Y&S 23968;
2. All Boxcars shall have been fully refurbished by North American Car Corporation or a company of similar skill and experience or be Boxcars of equivalent quality;
3. All Boxcars shall be suitable for sanitary paper product loading and shipment;
4. All Boxcars shall be classified "XP"; and
5. All Boxcars shall be (a) fifty (50) feet six (6) inches long; (b) fifty (50) ton or greater gross weight capacity; (c) ideally nine (9) feet four (4) inches wide, but no less than nine (9) feet two (2) inches wide; and (d) equipped with ten (10) foot sliding doors.

Provided that Scott shall in good faith accept Boxcars varying from the above specifications if Scott determines that any such cars are suitable for transportation of its products.

Dated: June 28, 1979

AVEC EQUIPMENT CORP.

By Philip S. Herby

Title President

SCOTT PAPER COMPANY

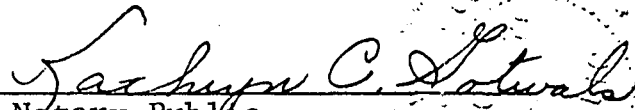
By D. R. Frisch JBB

Title Vice President

STATE OF PENNSYLVANIA

County of Delaware

On this 6th day of September, 1979, before me personally appeared Donald R. Frisch, to me personally known, who being by me duly sworn, says that he is the Vice President of Scott Paper Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

NOTARY PUBLIC, Tinicum Twp., Delaware Co.
My Commission Expires February 13, 1981

STATE OF OHIO

COUNTY OF CRAWFORD

On this 28th day of September, 1979, before me personally appeared Philip S. Hesby, to me personally known, who being by me duly sworn, says that he is the President of AVEC Equipment Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy Redden
Notary Public

DOROTHY REDDEN
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires May 26, 1983

OPERATING AND USE AGREEMENT

AGREEMENT made and entered into as of the 28th day of November, 1978; Between INDUSTRIAL INVESTMENT CORPORATION, an Ohio corporation, (hereinafter called "Owner") and YOUNGSTOWN & SOUTHERN RAILWAY COMPANY, an Ohio corporation, (hereinafter called "User").

W I T N E S S E T H:

WHEREAS, User desires to obtain from Owner certain railroad cars, hereinafter specifically designated or to be specifically designated for the purposes and upon the terms and conditions as set forth in this agreement.

NOW; THEREFORE, the parties hereto agree as follows:

1. Cars to be Furnished: Owner agrees to make available to User, and User agrees to use during the term of this agreement that number of used railroad cars to be provided by Owner under the terms and conditions and for the rentals hereinafter set forth, which cars are sometimes hereinafter called the "Cars". The Cars will be 50' fifty-five ton Cars with 10' doors. Any additional descriptions of the Cars, including any Association of American Railroads (A.A.R.) mechanical designation, identifying marks, road or serial numbers to be delivered to User upon the execution of this agreement, are set forth in Appendix A hereto.

Any additional Cars delivered to User shall be provided for and accepted by User as provided in paragraph 6, on the basis set forth in paragraph 5 hereof. When any such subsequent delivery of Cars is made, an amendment to Appendix A shall be executed by User and Owner indicating the type and description of the Cars involved, as reflected in Appendix A for Cars delivered upon the execution of this agreement. Upon acceptance by User of any subsequently delivered Cars, the provisions of this agreement shall become fully applicable thereto.

2. Term of Agreement: The term of this agreement for any Cars delivered hereunder shall commence upon their acceptance by User, as provided for in paragraph 6 hereof, and shall terminate on December 31, 1980, irrespective of the date of the acceptance of any Car. Owner shall have the right, upon mutual agreement of the parties hereto, to renew this agreement on a year to year basis upon giving User 90 days' written notice.

3. Delivery and Use of Cars: Owner agrees to deliver at its expense, and User agrees to accept the Cars at such point or points to which the parties may agree, not necessarily on User's property. Owner's obligation as to such deliveries shall be subject to all delays resulting from causes beyond its control. The Cars shall be used only in such interline service as shall be mutually agreed upon between the parties, and none of the Cars, except with prior written consent of Owner, shall be shipped beyond the boundaries of the United States, Canada or Mexico.

Owner agrees to apply User's reporting marks to the Cars, notwithstanding that title to them shall at all times remain in Owner, and Owner agrees to apply appropriate marks on the Cars to show title in Owner. Owner will also cause each Car to be marked with User's road numbers referred to in Appendix A. Such road numbers shall not be changed, except by agreement of both Owner and User.

4. Rental: Beginning with the third month after acceptance of the Cars, a Rental shall be payable each calendar month thereafter consisting of the net of all amounts paid or received by User during such month under the then applicable Car Hire, Car Service and A.A.R. repair billing rules, less a fee to User (Service Fee) of Fifteen Dollars (\$15.00) per Car per calendar month. Whenever the net of all amounts received by the User in a calendar month exceeds the amount of all payables and the Service Fee for such month, User shall promptly pay to Owner such net amount. In the event that the net of all amounts paid by User and/or the Service Fee for any calendar month exceeds the amount of receivables for such month, Owner shall promptly remit to User such net amount upon bill rendered therefor. In any

event, User shall be entitled to receive the Service Fee for each Car for each calendar month this agreement is in effect with respect to such Car.

Upon termination of this agreement for any reason, the Owner may, at its option,

- (a) apply the above Rental provisions to the use of Cars during such period of the agreement for which Rental had not been paid prior to termination, or
- (b) negotiate a final settlement of Rental with User.

5. Reports: Beginning in April, 1979, User shall report to Owner by the 20th day following the end of each calendar month the information applicable to such month with respect to all Cars:

- (a) Net amount of per diem, incentive per diem, if any, and mileage received and/or paid by User;
- (b) Gross amount of car service charges paid;
- (c) Net amount of A.A.R. repair billing;
- (d) Gross amount of Service Fee;
- (e) Net amount due Owner or payable to User.

In addition to the foregoing, User shall report to Owner in substantially the same form as Appendix B hereto in each June and December a listing, by Car, of all amounts received with respect to such Car pursuant to Car Hire Rules and a listing of all A.A.R. repair billing actually paid in the prior period.

6. Acceptance of Cars by User at Owner's Expense:

Each of the Cars shall be subject to User's inspection and approval, and shall thereupon be accepted in writing by a duly authorized officer of User.

7. Maintenance or Repairs: Owner shall at all times during the term of this agreement, and at its own cost and expense, maintain and keep the Cars in good and proper repair and running condition. In the event, however, that any of the Cars are damaged or destroyed while on User's railroad, User shall assume financial responsibility therefor. Owner also agrees that it shall, at its own cost, comply with and maintain the Cars in accordance with all governmental laws, regulations and requirements, and with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), with respect to the use, maintenance and operation of the Cars during the continuance of this agreement. In the event that any equipment or appliance on any Car shall be required to be changed or replaced, whether removable or otherwise, or any additional or other equipment or appliance is required to be installed on any Car in order to comply with such laws, regulations, requirements and rules effective after the date of the delivery of such Car, after receipt of written permission to make repairs, Owner agrees to make such changes, additions and replacements at Owner's expense. Any parts installed or replacements made upon the Cars by User shall be considered accessions to the Cars and title thereto shall be immediately vested in Owner.

8. Cars Removed from Service: In the event of the loss or destruction of any Car from any cause whatsoever during the term of this agreement, the Rental with respect to such Cars shall terminate at the time provided for in the Car Hire Rules, provided, however, that the Service Fee shall terminate three months thereafter. The Owner or its insurer shall have the rights of subrogation and indemnification to and for any claim for loss or destruction and may thereunder, at its option, assume the right to collect its claim for the value of such Car from the party responsible and liable for the loss or destruction of the Car. In furtherance of the foregoing, User hereby authorizes and empowers Owner in Owner's own name, or in the name of and as attorney hereby irrevocably constituted for User to ask, sue for, collect, receive and enforce any and all rights to which User may be entitled by reason of the destruction of the said Car. Owner shall have the right, but shall not be obligated, to substitute for any destroyed Car another Car of the same type and capacity and the monthly Rental with respect to such substituted Car shall commence upon delivery of such substituted Car to User.

9. Payment of Taxes, Liens and Other Items: The following additional costs and expenses shall be the responsibility of and be paid by Owner:

(a) All license fees, assessments and sales, use, property and other tax or taxes now or hereafter imposed by any state, federal or local government upon the Cars or upon the use thereof, whether assessed in the name of Owner or User. If User for any reason pays any of the aforesaid, Owner agrees to reimburse User promptly upon receipt of bills therefor; and

(b) The cost and expense of removing User's markings from the Cars upon termination of this agreement.

User shall not pay a license fee, assessment or tax in the first instance without giving Owner at least ten (10) days written notice thereof so that Owner may have an opportunity to make payment itself or contest the same in which latter event User will cooperate with Owner.

10. Assignment: User shall make no transfer or assignment of its interest under this agreement with respect to the Cars covered hereunder without Owner's prior written consent. No right, title or interest in any of the Cars shall vest in User by reason of this agreement except for the provisions of paragraph 4 of this agreement, or by reason of the delivery to or use by User of the Cars, except the right to use the Cars

in accordance with the terms of this agreement. Owner and any assignees of Owner shall be entitled to sell, assign and transfer its entire title and reversion in and to the Cars and/or its right to Rentals and other payments payable by the User hereunder and to the performance of the other covenants herein made by User, and such assignee or any subsequent assignee thereof shall have and succeed to all of the rights, duties and remedies herein conferred upon and reserved to Owner. User shall be obligated under this agreement to the Owner, assignee or subsequent assignee only upon receipt by User of written notification from both the Owner and its assignee or by any assignee or subsequent assignee that such assignment or subsequent assignment has taken place.

11. Remedies: If User shall fail to perform any of its obligations hereunder, Owner shall give written notice to User, and if User shall fail to cure within thirty (30) days of such notice, Owner at its election may either (a) terminate this agreement immediately, or (b) withdraw the Cars which have to that date been delivered from the service of the User and deliver the same, or any thereof, to others upon such terms as Owner may see fit.

The time of payment of Rental is of the essence of this agreement. If User shall fail to carry out and perform any of its obligations under this agreement, or if a petition in bankruptcy, or for reorganization, or for a trustee or receiver is filed by or against User (unless such petition shall

be dismissed within thirty (30) days from the filing of other effective date thereof, or shall, within such period be nullified, stayed or otherwise rendered ineffective, or unless any such receiver(s) or trustee(s) shall, within thirty (30) days from the date of his or their appointment, adopt this agreement pursuant to due authority of the Court of his or their appointment), then and in any such event, Owner may, at its option, declare this agreement terminated and upon such declaration all Rentals not theretofore due and payable shall forthwith become due and payable and Owner may enter upon the railroad or premises where the Cars or any of them may be and retake possession thereof, and remove User's road number and name therefrom. If Owner waives its said rights or does not declare this agreement terminated, User's obligations hereunder shall continue. The aforesaid remedies of Owner shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity. No delay or failure on the part of Owner to exercise any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof, and no act or omission to act by Owner against User or against any Car, or any delay or indulgence granted or allowed by Owner, shall prejudice any of Owner's rights.

12. Termination and Return of Cars: At the end of the term of this agreement, or upon any termination thereof for cause as defined herein, User shall forthwith surrender possession of the Cars (except Cars previously removed from service) to Owner at such point or points where the Cars may then be located. From the time of such surrender, the Cars shall become and remain the responsibility of Owner.

13. Recordation: Owner at its option may cause this agreement to be filed and recorded with the Interstate Commerce Commission under the Interstate Commerce Act in order to publish notice of, and to protect the title of Owner to the Cars. User shall execute any and all other and further instruments as shall reasonably be requested by Owner to assure such publication and such protection of such title. Owner shall pay all costs, charges and expenses, including all recording and registration taxes and fees, incident to the filing, registering and/or recording of this agreement and of any instruments of further assurance hereunder.

14. All Parties Bound: Subject only to the limitations of paragraph 9 hereof, this agreement shall be binding upon and inure to the benefit of the Owner and User and their respective successors and assigns.

15. Execution in Counterparts: This agreement may be simultaneously executed in two or more counterparts, each

of which shall be deemed to be an original, and such counterparts together shall constitute but one and the same agreement which shall be sufficiently evidenced by any such original counterpart.

16. Notice in Writing: Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail, first class postage prepaid, or delivered to a telegraph office, charges prepaid, addressed as follows: If to the Owner: To the attention of Philip Hesby, President, Industrial Investment Corporation, P. O. Box 706, Galion, Ohio 44833. If to the User: To the attention of Gordon E. Neuenschwander, President, Youngstown & Southern Railway Company, 324 P&LE Terminal Building, Pittsburgh, PA 15219, or addressed to either party at such other address as such party shall hereafter furnish to the other in writing.

17. Construction: The remedies in this agreement provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in Owner's favor existing at law or in equity and may be exercised from time to time and as often and in such order as may be deemed expedient by the Owner. The captions herein are inserted for convenience only and shall not affect the construction of this agreement. No delay or omission of the Owner in the exercise of any right or power accruing upon any

event of default shall impair any right or power or shall be construed to be a waiver of such event of default or an acquiescence therein. The provisions of this agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, Owner and User, respectively have caused these presents to be signed in their respective corporate names as of the day and year first above written.

INDUSTRIAL INVESTMENT CORPORATION

WITNESS:

By John S. Henby, Pres.
President

R. E. Tonley

YOUNGSTOWN & SOUTHERN RAILWAY COMPANY

WITNESS:

By John E. Newmarch
President

R. E. Tonley

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

ss:

On this 11th day of Jan, 1979, before me, the undersigned Notary Public, personally appeared PHILIP S. HESBY, who, being by me duly sworn, acknowledged that he is President of Industrial Investment Corporation; that he executed the foregoing instrument for and on behalf of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorinda R. Deneen

DORINDA R. DENEEN, Notary Public
Allegheny County, PA
My Commission Expires February 3, 1980

My commission expires: Feb. 3, 1980

COMMONWEALTH OF PENNSYLVANIA)

) ss:

COUNTY OF ALLEGHENY)

On this 11/1 day of Sept, 1944, before
me, the undersigned Notary Public, personally appeared G. E.
NEUENSCHWANDER, who, being by me duly sworn, acknowledged that
he is President of the Youngstown & Southern Railway Company;
that he executed the foregoing instrument for and on behalf of
said corporation and that the execution of the foregoing instru-
ment was the free act and deed of said corporation.

Daniel R. Decker

DANIEL R. DECKER, Notary Public
Notary Public for Pennsylvania
My Commission Expires July 3, 1950

My commission expires: July 3 1950

INDUSTRIAL INVESTMENT CORPORATION REF FIVE BOX CARS SELECTED

3004	23210	23470	23719	23962	24236	24647	25008	25248
3017	23211	23486	23724	23969	24298	24663	25012	25256
3024	23218	23494	23741	23974	24329	24678	25015	25270
3036	23220	23502	23742	23986	24341	24686	25039	25273
3045	23224	23510	23744	23988	24347	24712	25051	25281
3054	23248	23517	23745	23990	24355	24735	25054	25289
3061	23260	23524	23751	23992	24367	24736	25055	25327
3066	23261	23536	23793	23997	24384	24743	25058	25329
3071	23266	23537	23802	24029	24389	24760	25082	25334
3083	23278	23538	23816	24045	24400	24775	25111	25386
3093	23287	23550	23823	24052	24409	24786	25112	25414
3102	23291	23554	23825	24058	24445	24792	25116	25422
3103	23294	23556	23826	24071	24446	24800	25121	25446
3114	23295	23579	23853	24074	24460	24826	25127	25449
3116	23324	23587	23858	24087	24474	24835	25133	25454
3120	23345 23346	23601	23868	24096	24475	24856	25144	25463
3128	23348	23605	23869	24099	24486	24861	25145	25465
3129	23352	23643	23873	24119	24497	24867	25156	25466
3135	23362	23654	23884	24123	24502	24884	25162	25471
3154	23369	23666	23906	24154	24519	24894	25164	25479
3168	23388	23672	23912	24157	24522	24903	25171	25497
3172	23389	23673	23919	24158	24545	24911	25179	25498
3174	23392	23683	23925	24159	24569	24913	25180	25512
3175	23400	23694	23936	24184	24572	24984	25193	25519
3181	23410	23701	23939	24186	24589	24993	25195	25522
3195	23413 23421	23702	23948	24196	24606	25001	25205	25536
3200	23451	23707	23958	24232	24630	25005	25234	
3204	23453	23716	23961	24235	24639	25006	25247	

23019	25011
23113	25020
23136	25097
23303	25251
23382	25287
23559	25366
23641	25374
23670	25400
23717	25494
23737	25569
23759	25591
23772	25614
23921	25632
23930	25683
23982	25685
24013	25689
24088	25722
24095	25812
24111	25825
24219	25903
24253	25954
24286	25974
24442	25997
24591	26073
24858	26093
24974	

CERTIFICATE OF NOTARY PUBLIC

STATE OF PENNSYLVANIA

:


SS

COUNTY OF PHILADELPHIA

:

The undersigned Notary Public hereby certifies that he has compared the copy of a document entitled Operating and Use Agreement attached hereto with the original thereof and that such copy is a complete copy of the original thereof in all respects, including the dates, signatures and acknowledgments.

DATED THIS 26TH DAY
OF OCTOBER, 1979


Notary Public

WILLIAM C. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

ASSIGNMENT

For value received, INDUSTRIAL INVESTMENT CORPORATION, an Ohio corporation, does hereby sell, assign, transfer and set over unto AVEC EQUIPMENT CORPORATION, an Ohio corporation, all its right, title and interest of, in and to Operating and Use Agreement, dated as of November 28, 1978, between INDUSTRIAL INVESTMENT CORPORATION and YOUNGSTOWN & SOUTHERN RAILWAY COMPANY.

INDUSTRIAL INVESTMENT CORPORATION

By Philip S. Hesby
President

Dated: April 2, 1979

ATTEST:

Jan. B. Hesby
Secretary

ACCEPTANCE OF ASSIGNMENT

For value received AVEC EQUIPMENT CORPORATION hereby accepts the assignment of the above mentioned agreement, and hereby agrees to abide and perform the duties and obligations in said agreement to be performed by INDUSTRIAL INVESTMENT CORPORATION.

AVEC EQUIPMENT CORPORATION

By Philip S. Hesby
President

Dated: April 2, 1979

ATTEST:

Jan. B. Hesby
Secretary

CONSENT TO ASSIGNMENT

YOUNGSTOWN & SOUTHERN RAILWAY COMPANY, an Ohio corporation, hereby consents to the above assignment by INDUSTRIAL INVESTMENT CORPORATION unto AVEC EQUIPMENT CORPORATION.

YOUNGSTOWN & SOUTHERN RAILWAY
COMPANY

Dated: April 2, 1979 By Gordon E. Neuenhauer
President